3. Is it legal for a doctor of medicine to delegate authority to teachers or nurses employed as such or others for pay or without pay to diagnose diseases or give treatments for patients not under his immediate supervision?

Preliminarily, it should be noted that the practice of the healing arts is limited to persons duly licensed under the various laws of the state regulating the several types of practice or systems of treating the sick and afflicted. Anyone who diagnoses or treats another without possessing a license to employ the particular type or mode of treatment used in the particular case is guilty of a misdemeanor. (Business and Professions Code Section 2141; also opinion NS3128.)

The exceptions to the foregoing are (*a*) emergency treatment which may be rendered by anyone, including teachers or nurses (Business and Professions Code, Section 2144), and (*b*) nursing service rendered under the supervision and direction of a person licensed to practice one or more of the healing arts.

In answer to your first question, I find no authority by which a teacher or nurse may *treat* for any injury or disease, except under the circumstances described in (*a*) and (*b*) above. I might add that I am unable to perceive how, for example, treatment for a wart or mole could be considered emergency treatment. To come within the exceptions noted, the emergency must be bona fide.

Your second question is, likewise, answered in the negative.

As pointed out in the beginning of this opinion, Business and Professions Code, Section 2141, makes it unlawful for anyone not licensed as a physician, drugless practitioner, chiropodist, or midwife to *diagnose* the mental or physical condition of another. Under the established principle of law that statutes on the same general subject, called statutes *in pari materia,* must be read and construed together, we must add to the foregoing list of persons who may lawfully diagnose conditions coming within the authorized scope of their practice or treatment, licensed naturopaths, osteopaths, chiropractors, and dentists. (See 23 Cal. Jur., p. 785; also opinion NS3128.) All persons not licensed to practice one of the modes of treating the sick and afflicted, mentioned in this paragraph, who diagnose diseases, do so in violation of Business and Professions Code, Section 2141, and thereby commit misdemeanors. Teachers and nurses, not being so licensed, may not diagnose. Nor do I find any statute authorizing a teacher or nurse to placard or quarantine premises or persons in the absence of a diagnosis by a licensed practitioner of the existence of a quarantinable disease.

Your third question is, likewise, answered in the negative.

Only licensed practitioners may diagnose or treat. (Business and Professions Code, Section 2141.) The privilege or right to practice a particular healing art is a purely personal privilege or right on the part of those who possess the prescribed qualifications, have met the prescribed requirements, and to whom a license has been issued by the duly authorized state agency. It is a privilege or right which cannot be delegated to another not similarly licensed. This principle is given express recognition in Business and Professions Code, Section 2392, which reads, in part, as follows:

> . . . the aiding or abetting of any unlicensed person to practice any system or mode of treating the sick or afflicted constitutes unprofessional conduct within the meaning of this chapter.

This does not, however, prohibit a licensed practitioner, in treating pupils, from using the services of a nurse, acting under his supervision and direction.

The only doubt that may be cast upon the foregoing conclusions to be found in the School Code, Division 1, Chapter 4, Sections 1.110-1.127. However, upon careful analysis, I am of the opinion that there is nothing in said Chapter 4 in conflict with the principles above announced.

Said Chapter 4 provides for supervision of the health of pupils by 'physical inspectors' who may be either a physician, teacher, nurse, oculist, dentist, optometrist, or any one or more of such persons (School Code, Section 1.110), and provided such person holds a health and development certificate issued pursuant to the School Code (School Code, Section 1.112).

Said chapter further provides, by implication if not expressly, that such physical inspectors shall examine pupils as to their physical condition and note any defect that may exist (School Code, Section 1.120), reporting same to the parent or guardian to take action to cure said defect. (School Code, Section 1.123.) Said chapter also provides for the giving of sight and hearing tests by physical inspectors. (School Code, Section 1.120a.) Finally, the chapter provides that the pupil shall be sent home 'whenever there is good reason to believe that such child is suffering from a recognized contagious or infectious disease.' (School Code, Section 1.121.)

Nowhere in said Chapter 4 is there any express or implied authorization given the physical inspector to *treat* any pupil.

Nowhere in said Chapter 4 is the term 'diagnose' used. With reference to the possibility of an implied authorization to diagnose, I do not believe that the Legislature used the term 'examine,' or the term 'testing' of sight and hearing, or the phrases 'any defect noted by the physical inspector' or 'good reason to believe that such child is suffering from a recognized contagious or infectious disease' in the sense of a professional diagnosis as used in and prohibited by Business and Professions Code, Section 2141 (discussed *supra*). It is my opinion that said terms and phrases were employed by the Legislature in the sense of an observation by a person trained in a general way to note certain readily recognizable characteristics or symptoms of disease or defects and to report thereon to the parent or guardian or to the school authorities, as required under the circumstances of the particular case.

Any other construction would conflict with Business and Professions Code, Section 2141, prohibiting the diagnosing and treating by unlicensed persons. By construing Chapter 4 of Division 1 of the School Code in the manner above indicated, the provisions of said School Code and of the Business and Professions Code, respectively, are reconciled and each given efficacy. The rule is well established that such construction must be accorded wherever possible. (23 Cal. Jur., p. 192.)

Very truly yours,

EARL WARREN, *Attorney-General.*

By Thomas Coakley, *Deputy.*"

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.

San Francisco

Socialized Medicine: Is the Word "Insurance" Misused?

Recent discussions in the JOURNAL* concerning the use of the terms "health insurance" or "sickness insurance" to describe payment for medical and surgical services by means of fixed periodic payments, has moved us to add our views on proper terminology.

Our quarrel is with the indiscriminate use of the word "insurance," a label which does not fit except in a few instances. As descriptive phrases have tremendous propa-

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

* In August CALIFORNIA AND WESTERN MEDICINE, see page 107.

ganda value and are capable of affecting the thought of the entire population, we feel justified in submitting a brief analysis of the term "insurance" as applied to medical services. For the effect upon thinking of a descriptive phrase, consider what would probably happen to life insurance companies if life insurance were universally described as "death insurance."

The word "insurance" has been defined by countless authorities, sometimes in terms sufficiently broad to include all contracts regardless of subject matter, and at other times in narrow terms including only those contracts involving an assumption of another's risk and an agreement to identify the other person for any loss caused by the risk in return for a consideration or "premium." Statutes, judicial decisions, dictionaries, and textbooks usually agree upon a definition in substance as follows:

> An agreement under which the insurer, for a consideration, agrees to reimburse or indemnify the insured against loss or damage caused by the happening of a contingent or unknown event.

Before applying the foregoing definition to medical services, it must be determined whether the cost of medical care is or is not a "contingent or unknown event." It must also be determined whether or not payment for medical services is a "loss or damage."

Clearly, the time of need for medical services is unpredictable. Accordingly, the event is contingent and we may conclude that if the *cost* of such services is a "loss or damage" that insurance is involved in those instances where the cost is indemnified or reimbursed.

With respect to "loss or damage," it is highly debatable whether the cost of medical services is the type of *loss* contemplated by insurance statutes. Merely because an event is costly does not mean that it involves loss or damage. Taxes are costly. Food and lodging are costly. The acquisition and maintenance of an automobile is costly. Yet no one would contend that an individual's necessary expenditures for food, lodging, clothes, and transportation involve loss or damage. Such expenditures are a part of the matter of living. On the other hand, if one's house burns down or one's ship sinks or the head of the family dies, there is a catastrophe which may be said to be a loss or damage. As between these two kinds of costly occurrences, where should we classify medical and dental and other health services? It seems to us that they they are a part of everyday living and that their cost falls within the same category as food, lodging, and clothing. If this is so, then the cost of such services is not a loss or damage in the sense of a catastrophe arising from a contingent or unknown event. Hence, the word "insurance" is never properly used to describe a means adopted for the payment of medical services.

However, let us assume that the cost of medical services can be said to be a loss or damage so that the word "insurance" may properly be used to describe certain functions. If so, the word can only be used in those instances where the cost is indemnified or reimbursed *not* where the cost is absorbed by an outside agency—public or private—because, as we have seen, insurance inherently involves indemnification or reimbursement. Under this view, contracts calling for indemnification or reimbursement for medical and surgical costs actually incurred can properly be said to be insurance and can be defined as "sickness insurance" or "health and accident insurance," as the case may be.

Proceeding further, even with the concession that indemnification or reimbursement of medical costs is insurance, we still cannot use the word "insurance" to describe most socialized medicine plans. No governmental plan in operation or proposed involves reimbursement. On the contrary, such plans inevitably call for direct furnishing of *services* by the governmental entity, thus eliminating to the beneficiary any direct payment for medical services and substituting a periodic tax. The services furnished are secured either through employment of physicians or through the payment of fees by the Government for services rendered.

Most nongovernmental plans involve the furnishing of services by a lay entity in return for periodic payments. Here again the lay entity (by "lay entity" is meant any legal person, natural or artificial, including groups of physicians operating under a common name) either secures services through employment of physicians or through payment on a fee basis. In either instance, the beneficiary or patient is not indemnified or reimbursed for cost of services, but in lieu thereof receives a direct service in return for periodic contributions.

Governmental plans can only accurately be described as "state medicine," for they are exactly that, namely, the sovereign furnishing medical care. Most private plans can probably best be described as "coöperative medical service" or "group medical service." Those having limited panels furnishing service are merchandising a commodity—medical care—and should be so described. Those having open panels which permit a real freedom of choice are in fact *coöperative* endeavors between physicians and patients to solve a problem and should be so designated.

To describe sickness insurance, state medicine, and cooperative or group medical service in one all inclusive phrase is, we believe, impossible. Certainly neither health insurance nor sickness insurance is sufficiently broad to be a workable definition. Perhaps "socialized medicine" is the nearest that one can come to a definition that will include both indemnification of the cost of medical services and furnishing of medical services by a lay entity—governmental or private—in return for periodic contributions. Unless the medical profession is willing to become classified as one small subdivision within the field of insurance, it will do well to shun the word "insurance" in describing social experiments undertaken by it or imposed upon it except those that actually indemnify or reimburse the patient for professional bills incurred in the normal physician-patient relationship.

MEDICAL EPONYM

Jacksonian Epilepsy

This condition bears the name of John Hughlings Jackson (1834-1911). The following quotation was written by an anonymous contributor to the column, "Reports of Medical and Surgical Practice in the Hospitals of Great Britain," and appeared in the *British Medical Journal* (1:773,1875), under the title, "London Hospital: Clinical memoranda of a series of interesting cases of nerve disorder now in hospital (under the care of Doctor Hughlings Jackson). . . ."

". . . In the convulsions spoken of (commonly called epileptiform convulsions), a good deal occurs before the patient loses consciousness. One patient gave a very vivid account of what Dr. Hughlings Jackson calls the 'march of the spasm.' This patient's fit begins in his left index-finger and thumb; it then passes up the arm, and affects the face, and next passes down the leg. It is the rule that fits which begin in the hand should begin in the index-finger and thumb; when they begin in the foot, they usually begin in the great toe.

"Speaking of these cases, and with reference to their difference from such cases as are commonly called epilepsy par excellence, Dr. Hughlings Jackson said that he thought the abrupt division into cases with and cases without loss of consciousness was not even justifiable on grounds of convenience. . . . The distinction was, he insisted, into cases where consciousness was lost first of all, very early or late in the paroxysm.—R. W. B., in *New England Journal of Medicine*, Vol. 225, No. 4, July 24, 1941.